

IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

VELTON WATKINS,

Appellant,

vs.

LOUIS S. NELSON, Warden,  
California State Prison,  
Tamal, California,

Appellee.

No. 22512

APPELLEE'S BRIEF

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APPELLEE'S BRIEF

JURISDICTION

The jurisdiction of the United States District Court, Northern District of California, to entertain appellant's application for writ of habeas corpus was conferred by Title 28, United States Code, section 2241. The jurisdiction of this Court is conferred by Title 28, United States Code section 2253.

STATEMENT OF THE CASE

A. Proceedings in the State Courts.

On December 13, 1965, in an action entitled The People of the State of California v. Velton Watkins, petitioner was found guilty of murder in the first degree in violation of California Penal Code section 187. San Joaquin County Superior Court No. 17270. Appellant was sentenced to state prison for life.

Timely notice of appeal was filed in the





California Court of Appeal, Third Appellate District 3/Crim. No. 4114. Appellant's Opening Brief was filed by appointed counsel on June 8, 1966 and respondent's brief filed by the Attorney General on August 29, 1966.

On February 17, 1967, the California Court of Appeal affirmed appellant's judgment of conviction. People v. Watkins, 248 Cal.App.2d 603, 56 Cal.Rptr. 734 (1967). A hearing was denied by California Supreme Court (1967).

B. Proceedings in the Federal Courts.

Appellant's only application for relief in the federal courts by way of his petition for writ of habeas corpus filed August 8, 1967 in the United States District Court, Northern District of California, and numbered 47617. An order to show cause was issued on August 9, 1967 and a return filed by the California Attorney General on August 28, 1967. Records of the proceedings in the state courts were considered by the District Court judge and the petition was denied on November 13, 1967. A certificate of probable cause to appeal and permission to proceed in forma pauperis issued on December 28, 1967.

STATEMENT OF FACTS

The relevant facts of this case, which are not in dispute, are contained in the decision of the California Court of Appeal affirming appellant's judgment of conviction. People v. Watkins, 248 Cal.App.2d 603; 56 Cal.Rptr. 734 (1967). Appellant and his codefendant, Foster, were



charged with first degree murder. Foster was also charged with assault with a deadly weapon.

Four eye witnesses testified that appellant and Foster attacked the victim in a "skid row" section of Stockton, California. Foster repeatedly struck the victim on the head with a crowbar. When the victim attempted to escape, he was seized by appellant. Foster and appellant then dragged the victim to a vacant lot where he was again struck with the crowbar by Foster while appellant stood by. A policeman was directed to the scene by witness and found the victim lying face down in a pool of blood, his empty wallet beside him and his pockets turned inside out.

Nearby, Foster was observed armed with a crowbar and pursuing one Jose Vargas. He was arrested. There was blood on the crowbar and blood on his clothing. Appellant was found and arrested in a nearby bar.

Prior to the murder trial, Foster pleaded guilty to the Vargas assault. During the course of trial, in addition to the evidence related above, the prosecution introduced the testimony of Vargas and several witnesses concerning the crowbar attack upon Vargas by Foster. Appellant was not implicated in the attack upon Vargas. Both defendants testified at trial. Each admitted that he had been in the neighborhood and knew his codefendant. Each denied participation in the crime. Neither implicated the other.



## APPELLANT'S CONTENTIONS

1. Appellant was deprived of adequate representation by counsel at trial.

2. Appellant was deprived of his rights to individual counsel and a separate trial.

## SUMMARY OF APPELLEE'S ARGUMENT

I. The District Court correctly determined that no conflict of interest existed between appellant and his codefendant and that appellant was adequately represented by counsel.

II. Appellant was neither entitled to separate counsel nor a separate trial.

## ARGUMENT

### I

THE DISTRICT COURT CORRECTLY DETERMINED THAT NO CONFLICT OF INTEREST EXISTED BETWEEN APPELLANT AND HIS CODEFENDANT AND THAT APPELLANT WAS ADEQUATELY REPRESENTED BY COUNSEL.

Appellant contends that the trial court erred in allowing the prosecution to present evidence of the attack upon Vargas by Foster after Foster had pleaded guilty to the assault. He contends that evidence of the assault by Foster created a conflict of interest between himself and Foster which prohibited the public defender from adequately representing either defendant. As noted by the District Court Judge in his order denying the petition, appellant's claim of a conflict of interest is based upon his contention that if defense counsel requested an





admonition that the evidence of the assault upon Vargas be admitted only against Foster, Foster was prejudiced. If he failed to request such an admonition, appellant was prejudiced.

Initially, respondent submits that the evidence of the attack upon Vargas by Foster in no way implicated appellant. Despite counsel's failure to request that the jury be admonished that the evidence of the Vargas attack be considered only against Foster, the court did, in fact, instruct that the evidence was received for the limited purpose of establishing the innocence or guilt of Foster. As noted by the California Court of Appeal,

"The quoted instruction conveyed to the jury the unmistakable direction that evidence of the Vargas incident was received for a limited purpose only, that such purpose had to do with the defendant Foster and that the jurors were not permitted to consider it for any other purpose. After receiving this instruction, the jury could not reasonably weigh evidence of the Vargas incident in relation to the guilt or innocence of appellant Watkins."

Appellant asserts that the court erred in allowing the prosecution to introduce evidence of Foster's attack upon Vargas because Foster entered a plea of guilty to the charge of assault with a deadly weapon before the trial





began. He relies upon California Penal Code section 1025 for the proposition that evidence of a prior crime may not be introduced during trial for a separate offense.

Initially appellee submits that, except insofar as this evidence served to prejudice appellant, he is without standing to raise this contention. For the reasons stated above, no prejudice resulted. Secondly, the evidence was properly admissible as it tended to prove that Foster participated in the murder for which he was being tried. The similarity of the attack and the proximity in both time and distance from the murder strongly indicated that Foster was one of the murderers. The evidence was thus admissible despite the fact that it concerned another crime. Cal. Evid. Code § 1101(b); See People v. Peete, 28 Cal.2d 306, 315-316 (1946).

Each defendant testified in his own behalf. Each denied any participation in the murder. Neither implicated the other. No conflict of interest was urged by defense counsel and none is reflected by the record. The jury was fully apprised of appellant's defense which was in no way undermined by that of his codefendant.

The record contains overwhelming evidence of appellant's guilt. He has not alleged and the record fails to indicate any available defense which counsel failed to present. See Dalrymple v. Wilson, 366 F.2d 183 (9th Cir. 1966); Cf. Wilson v. Rose, 366 F.2d 611 (9th Cir. 1966). The burden was upon appellant to establish that the



representation afforded him rendered the proceedings a farce, a sham and a mockery of justice. Knowles v. Gladden, 378 F.2d 761, 767 (9th Cir. 1967); Grove v. Wilson, 368 F.2d 414, 416 (9th Cir. 1966); Dalrymple v. Wilson, supra at 185. Appellee submits that appellant has failed to sustain the burden and the District Court properly denied his application for habeas corpus.

## II

APPELLANT WAS NEITHER ENTITLED TO  
SEPARATE COUNSEL OR A SEPARATE TRIAL.

Having determined that there was no conflict of interest, appellee submits that appellant's remaining contentions are without merit. Appellant contends that he was deprived of the right to independent counsel. In the absence of a conflict of interest between codefendants, there is no right to independent counsel. Glasser v. United States, 315 U.S. 60 (1942); Lugo v. United States, 350 F.2d 858 (9th Cir. 1965).

Nor was appellant entitled to a separate trial. California Penal Code section 1098 specifically provides that when two or more defendants are jointly charged with any public offense, they must be tried jointly, unless the court orders separate trials. This determination is within the discretion of the trial court. The record reflects that a motion for separate trials was made by defense counsel at the beginning of trial but that no conflict of interest was established. There is no federal constitutional right to separate trials and, in the absence of



a conflict of interest, the exercise of discretion of the trial judge will be sustained. Delli Paoli v. United States, 352 U.S. 232 (1957); United States v. Ball, 163 U.S. 662 (1896).

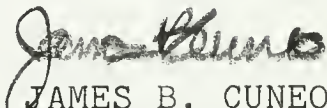
CONCLUSION

For the foregoing reasons, it is respectfully submitted that the District Court correctly determined that petitioner was deprived of no federally protected constitutional rights and that the order denying the petition for writ of habeas corpus should be affirmed.

DATED: May 13, 1968

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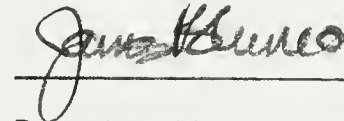


CERTIFICATE OF COUNSEL

I certify that in connection with the preparation of this brief, I have examined Rules 18, 19, and 39 of the United States Court of Appeals for the Ninth Circuit and that in my opinion this brief is in full compliance with these rules.

DATED: May 13, 1968

JAMES B. CUNEO

A handwritten signature in dark ink, appearing to read "James B. Cuneo", is written over a horizontal line.

Deputy Attorney General  
of the State of California

